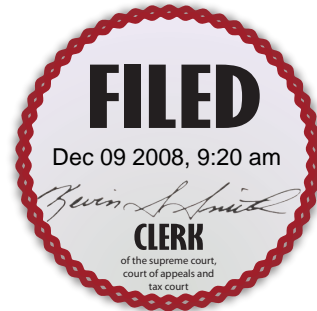


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KENNETH ANGEL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0805-CR-425

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Louis Rosenberg, Magistrate

The Honorable Linda E. Brown, Judge

Cause No. 49F10-0711-CM-239912

December 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Kenneth Angel appeals following his conviction for Criminal Mischief as a Class B misdemeanor,¹ for which he received a sentence of 180 days, with 176 days suspended to probation. The trial court also ordered Angel to pay \$160 in court costs, a \$100 fine, and \$320 in various probation fees.² Upon appeal, Angel claims that the trial court abused its discretion in sentencing him. We affirm.

FACTS AND PROCEDURAL HISTORY

On October 5, 2007, Indianapolis Metropolitan Police Officer Monica Hodge responded to a report of vandalism to a Ford Ranger truck located at 1741 Miller Street. Upon arriving at the scene, Officer Hodge found that the driver's side window was broken and that there was glass on the ground. A metal "wheel lug" capable of causing this damage lay on the driver's side seat.

Linda Jones owned this truck. Her neighbor, Shane Bolser, saw an individual, who he later identified in court and in a photo array as Angel, break the truck's window by throwing a metal object at it. According to Bolser, he asked Angel what he was doing, and Angel responded by threatening to slap Bolser if he told anyone.

On November 13, 2007, the State charged Angel with Class B misdemeanor criminal mischief. Following a March 11, 2008 bench trial, the trial court found Angel guilty as charged. In sentencing Angel to 180 days, with 176 days suspended to probation, the court considered as an aggravating factor Angel's threat to Bolser. The

¹ Ind. Code § 35-43-1-2 (2007).

² The CCS, which assesses costs of \$100 for each of "State Fines and Forfeitures" and "Criminal Mischief/MB" suggests that Angel's total costs and fees amount to \$680. It appears, based upon the court's Order of Judgment of Conviction, that these \$100 fees may cover the same item, and that the total fees and costs assessed against Angel may instead total \$580.

court also imposed a \$100 fine, \$160 in court costs, and \$320 in various probation fees. When defense counsel objected on the basis that Angel's only income came from social security, the trial court indicated that it would let him "work off" the probation fees. Tr. p. 65. In addition, the court imposed a no-contact order, barring any contact by Angel with Bolser. On April 17, 2008, Angel filed a motion to file a belated notice of appeal, which the trial court granted. This appeal follows.

DISCUSSION AND DECISION

Upon appeal, Angel claims that the trial court abused its discretion in considering as an aggravating circumstance his threat to Bolser.³ Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g by Anglemyer v. State*, 875 N.E.2d 218 (Ind. 2007). So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion. *Id.* An abuse of discretion occurs if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id.* (quotation and internal quotation omitted).

Under Indiana Code section 35-50-3-3 (2007), a defendant convicted of a Class B misdemeanor may be sentenced to a term of not more than 180 days. We first observe that the trial court is not required to issue a sentencing statement for this misdemeanor offense, *see Anglemyer*, 868 N.E.2d at 490, or to justify its sentence by using aggravators.

³ The State argues that Angel's challenge to his sentence and fees is moot because his probationary term has likely been served by this point. Because there is no documentary evidence in the record confirming the State's claim to this effect, we will address the merits.

See Cuyler v. State, 798 N.E.2d 243, 246 (Ind. Ct. App. 2003), *trans. denied*. As for Angel's claim that the trial court's consideration of Angel's threat was improper, Indiana Code section 35-38-1-7.1(a)(10) (2007) explicitly authorizes the court to consider this factor. Pursuant to section 35-38-1-7.1(a)(10), in determining what sentence to impose for a crime, the court may consider as an aggravating circumstance the fact that the defendant "threatened to harm the victim of the offense or a witness if the victim or witness told anyone about the offense." Angel's challenge to this aggravator is without merit.

Angel also challenges the trial court's imposition of a fine and court costs by claiming that they were excessive and should have been suspended. We review the trial court's imposition of a fine and fees for an abuse of discretion. *See Johnson v. State*, 845 N.E.2d 147, 152 (Ind. Ct. App. 2006) (fine), *trans. denied*; *Mathis v. State*, 776 N.E.2d 1283, 1288 (Ind. Ct. App. 2002) (fees), *trans. denied*. With respect to Angel's \$100 fine, we observe that it is on the low side of the maximum \$1000 fine permitted by statute. *See Ind. Code* § 35-50-3-3. Apart from his claim of indigency, Angel fails to provide any reasoning for why he deems this fine or the \$160 in court costs to be an abuse of discretion. The court held an indigency hearing, found Angel to be indigent, and appointed pauper trial and appellate counsel, so it was fully aware of Angel's financial situation when imposing the fine and fees. *See Purifoy v. State*, 821 N.E.2d 409, 414 (Ind. Ct. App. 2005), *trans. denied*. Significantly, the court did not order Angel to pay ninety-five dollars in restitution for the broken window. We find no abuse of discretion regarding the alleged excessive nature of the fine and fees.

In addition, Angel appears to challenge the trial court's imposition of probation fees by claiming that the court's stated willingness to permit Angel to "work off" those fees somehow impermissibly suggested that it would imprison Angel for failure to pay fees and/or other costs and fines. As the Supreme Court has in the past concluded, an indigent defendant may not be imprisoned for failure to pay fines or costs. *Whedon v. State*, 765 N.E.2d 1276, 1279 (Ind. 2002). We are puzzled by Angel's logic on this point, not in the least because the court's stated willingness to permit Angel to "work off" his fees suggests a rather generous attitude toward accommodating defendants who are unable to pay certain fees. Indeed, in response to the trial court's inquiry, the record concluded with Angel's informing the trial court that he was able-bodied and capable of working as a mechanic, presumably to pay off fees. Perhaps more importantly, the record contains no such reference by the trial court suggesting that Angel's failure to pay costs assessed against him would result in his imprisonment. Angel's claim on this point lacks merit.

The judgment of the trial court is affirmed.

RILEY, J., and BAILEY, J., concur.